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October 12, 1976

Mr. Alexander J. Kalinski  
Chairman  
Public Utilities Commission  
Pleasant Street  
Concord, New Hampshire 03301

Dear Mr. Kalinski:

On September 29, 1976, you requested an opinion on the question whether the Public Utilities Commission has the authority to permit parties appearing before it to make copies of hearing transcripts prepared by a private stenographer pursuant to a contract with the Commission. You have submitted a copy of that contract for our examination, and we note that it provides for the sale of a transcript to the Commission at a stated price. We also note that the Commission in a decision dated February 9, 1976 denied the motion of Volunteers Organized in Community Education (V.O.I.C.E.) requesting that it be permitted to use the Commission copy of transcripts prepared by the stenographer and reproduce the same on its own at lower costs, which decision was based in part upon the understanding that the private stenographer had a property interest in the information gathered and transcribed which could only be protected by requiring that transcript copies be ordered from the stenographer directly.

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Regardless of whether the stenographer may have a protectable property interest in a copy of a transcript which he sells to the Commission, he has not reserved it in his contract with the Commission. In addition, RSA 91-A:4 (Supp. 1975) provides as follows:

Minutes and Records Available for Public Inspection. Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda abstracts, photographic or photostatic copies, of the records or minutes so inspected, except as otherwise prohibited by statute or section 5 of this chapter.

The contract between the Public Utilities Commission and the stenographer was entered into after the effective date of RSA Chapter 91-A (August 26, 1967), and therefore is subject to and limited by the terms of that statute.

In addition, Section I(B) (11) of the Rules of the Public Utilities Commission provides:

## SECTION I

### RULES OF PRACTICE AND PROCEDURE

#### B. FORMAL REQUIREMENTS

##### 11. TRANSCRIPTS

"When the Commission desires a transcript of the evidence of any hearing to assist in its deliberation thereon, it shall order an original and one carbon copy of said transcript. One shall be filed with and become the property of the Commission, the other shall be for the petitioner. The cost of said transcripts will be charged to the petitioner. If other parties to the proceedings desire transcripts, they will make their own arrangements therefor with the reporter. The reporter's charges for attendance and expense will be charged to the petitioner." (Emphasis added)

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That rule specifically establishes that one copy of any transcript shall become the property of the Commission. The stenographer, having sold his transcripts to the Commission while this rule was in effect, cannot now object if the Commission makes use of its copy in accordance with the requisites of RSA 91-A:4 (Supp. 1975).

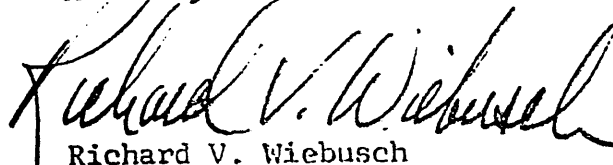
It should be noted that the rule goes on to provide that arrangements for other copies shall be made with the stenographer. To the extent that this is an optional arrangement, the provision is valid. However, if the rule requires a party to get copies only from the stenographer, it is in direct violation of RSA 91-A:4 (Supp. 1975) and therefore beyond the Commission's rule-making authority.

It is our conclusion, based upon the terms of the Commission's contract with the stenographer, section I(B) (11) of the Commission's Rules of Practice and Procedure, and RSA 91-A:4 (Supp. 1975) that the Commission is required to make its copy of hearing transcripts available for inspection and copying by all interested parties. This opportunity for inspection and copying must be under circumstances reasonably likely to assure that all interested parties will be able to rely upon and make use of the transcript purchased by the Commission with public funds. It appears to us that the only practicable way in which the Commission can provide for this sort of reliance is either to permit its copy to be taken from the office for copying or to make its copying machine available for use at a reasonable and stated rate. See Menge v. City of Manchester, 113 N.H. 533 (1973).

Yours sincerely,



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